IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2983 OF 2004

George Thomas Thakkeyil,)
M-7/2, Bhanumati, Bangur Nagar,)
Goregaon (West),)
Mumbai 400 090) ...Petitioner

V/s.

1. M/s.Sci-Tech Centre,)
Prabhat Nagar,)
Jogeshwari (West),)
Mumbai 400 102.)

2. G.G. Hulsure,)
XIIth Labour Court,)
Labour Court, Tardeo,)
Mumbai 400 034.)

3. Shri J.P. Limaye,)
Industrial Court,)
1st floor, New Administrative)
Bldg., Opp.Chetna College,)
Bandra (East),)
Mumbai 400 051.) ...Respondents

Shri V.P. Vaidya, Advocate for the Petitioner.
Shri R.V. Paranjpe, Advocate for Respondent No.1

CORAM : V.M. KANADE, J.

DATED : MARCH 15, 2007

ORAL JUDGMENT :-

1. The petitioner is challenging the order passed by the Labour Court by judgment and order dated 12th February, 1998 whereby the Court held that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and on that

ground, dismissed the complaint of the petitioner. He is also challenging the order passed by the Industrial Court, Mumbai, in Revision Application filed by him against the aforesaid order whereby the Industrial Court dismissed the revision application.

2. The learned Counsel for the petitioner submitted that the petitioner was working in the capacity as a clerk though he was appointed as an Executive (Administration) on the basic salary Rs.3881/- per month. The learned Counsel submitted that in the cross-examination in the evidence of witness of respondent no.1, Shri M.J. Thomas, he has stated in the cross-examination that chargesheet was issued in February 1993 against the petitioner and thereafter, enquiry was conducted as per Standing Orders and therefore, he was associated with that enquiry as M.R. The learned Counsel for the petitioner submits that this admission on the part of the respondent’s witness clearly establish that the petitioner was working as a workman and that the entire enquiry which was conducted for the alleged misconduct was under the provisions of the Standing Orders and this has consequently established that the company itself considered the

petitioner as a workman within the meaning of the said Act. In support of the submission, he relied on the judgment of this Court in the case of **S.A. Sarang v. W.G. Forge & Allied Industries Ltd., Thane & Ors. reported in 1995 CLR page 837.** He also invited my attention to the nature of duties and which was entrusted to the petitioner and submitted that from the evidence and material on record, it was clearly established that he is a workman.

3. The learned Counsel for respondent no.1 submitted that merely because the witness who gave evidence on behalf of the management, has stated that the enquiry was conducted under the Standing Orders, that by itself would not be sufficient for coming to a conclusion that the petitioner was a workman. He submitted that nowhere in the chargesheet, it has been stated that the petitioner had committed misconduct within the meaning of any particular clause in the standing orders. He submitted that in the entire correspondence and other documents, the petitioner has been treated as a supervisor and in fact, his salary as Executive (Administration) was more than supervisor which is Rs.3,881/- per month. Having considered the

rival contentions, in my view, both the Labour Court as well as the Industrial Court have ignored and overlooked a very vital aspect of the case and that is statement given by the witness on behalf of the management in which he in categorical terms admitted that the enquiry against the petitioner was conducted as per Model Standing Orders. Once it has come on record that the management was conducting the enquiry which is Model Standing Orders, it is not now possible for the employer to take a stand that he is not working after he challenged his order of termination in the Labour Court. This Court in the case of **S.A. Sarang (supra)** has held in the similar case that the employer is estopped from denying the said fact that the employee is a workman when the dispute regarding the dismissal of the employee finally lands up before the industrial adjudicator. In this case of **S.A. Sarang (supra),** the petitioner was employed in the services of the construction company known as W.G. Forge & Allied Industries Ltd. The company went into liquidation and the Official Liquidator was appointed. An application was made before the Court that the employee was a workman and therefore, he was entitled to file his claim and the further claim on priority in the limitation proceeding.

The petitioner in the said case was removed from service and when he challenged his removal from service while raising a industrial dispute, a preliminary issue was raised whether the petitioner was a workman and while considering the evidence on record, Justice B.N. Srikrishna (as he then was) has observed in para 6 as under :-

> "Uniformly, in each Show Cause Notice and charge-sheeet, it has been alleged that the act imputed to the Petitioner was a misconduct under the Model Standing Orders. It is not possible to ignore the cumulative effect of this conduct on the part of the First Respondent Employer. To what extent, the contention of Dr.Kulkarni needs to be accepted. If an employer continuously and consistently proposes and takes action against its employee on the footing that he is covered by the Model Standing Orders (thereby implying that the employee is a "workman" within the meaning of the Act), then such employer must be estopped from denying the said fact when a dispute regarding the dismissal of the employee finally lands up before an

> industrial adjudicator. It is unfortunate that the Third Repondent-Official Liquidator has not chosen to appear before the Court and assist the Court. However, the Show Cause Notices and Charge-sheet pointed out to me cannot be ignored and due weightage will have to be given to them. Considering the cumulative effect of those documents, I am of the view that the Petitioner was a "workman" within the meaning of Section 2(s) of the Act and, therefore, the impugned order needs to be interfered with."

4. In my view, the ratio of the judgment squarely applies to the facts of the present case. In my view, the findings recorded by the Labour Court and the Industrial Court to say the least are illegal as they did not take into consideration this vital aspect of the entire case. Both the orders are therefore liable to be quashed and set aside.

5. Considering the cumulative effect of all the documents on record, I am of the view that the petitioner was a workman within the meaning of Section 2(s) of the Industrial Disputes Act and therefore,

impugned order is set aside.

6. In the result, writ petition is allowed. Rule is made absolute. The impugned order of the Labour Court is quashed and set aside. The matter is remanded back to the Labour Court for trial and disposal in accordance with law and the Labour Court is directed to decide the case, as expeditiously as possible and in any case within a period of one year.

7. The learned Counsel for the respondent No.1 seeks stay of this order for a period of eight weeks. His request is declined.

(V.M. Kanade, J.)